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STATE OF ALASKA
THE LEGISLATURE

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May, 1988

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Mary Van Nimwegen

House L³C:

March 22, 1983

5-2031B
Cramer
3/22/88

Original sponsor: Labor & Commerce
Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 540 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to access to an employee personnel
7 file."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.10 is amended by adding a new section to read:

10 ARTICLE 7. EMPLOYEE RIGHTS.

11 Sec. 23.10.430. ACCESS TO PERSONNEL FILES. (a) An employer
12 shall permit an employee or former employee to inspect and make copies
13 of the employee's personnel file and other personnel information
14 maintained by the employer concerning the employee under reasonable
15 rules during regular business hours. The employer may require an
16 employee or former employee who requests copies of material under this
17 subsection to pay the reasonable cost of duplication.

18 (b) An employer may not maintain personnel information concern-
19 ing a specific employee or former employee unless the employer makes
20 diligent efforts to notify the employee or former employee that the
21 information is being maintained.

22 (c) This section does not supersede the terms of a collective
23 bargaining agreement.

24 (d) In this section,

25 (1) "employee" means a person employed by an employer;

26 (2) "employer" means a person who employs one or more other
27 persons and includes the state, the University of Alaska, the Alaska
28 Railroad, and political subdivisions of the state.

29

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An act relating to access to an BRU: Labor Relations
employee personnel file.
 Sponsor: House Labor & Commerce Committee Components: Labor Relations
 Requestor: House Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Any additional copying required by this bill for this division, or any Executive Branch agency, will either be charged to an employee or absorbed as a nominal increase in copy charges.

Prepared By: Bruce A. Cummings *Bruce Cummings* Phone: 465-4404
 Division: Labor Relations Date: March 21, 1988
 Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 3/21/88
 Agency: Department of Administration

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STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HB 540
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to an BRU: Labor Standards and Safety
employee personnel file."
 Sponsor: House Labor & Commerce Components: Wage and Hour
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards and Safety Date: 3/18/88
 Approved by Commissioner: Jim Sampson Date: 3/18/88
 Agency: Department of Labor

Distribution (by preparer) :
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POSITION PAPER
HB 540

This bill adds a new article to Chapter 10 (Employment Practices and Working Conditions) of Title 23 (Labor and Workers' Compensation). The new article would guarantee that secret files could not be kept on an employee. An employee would be entitled to inspect and copy the employee's personnel file (subsection (a)). Employees would be prohibited from maintaining personnel information on an employee unless the information is placed in the employee's personnel file (subsection (b)). Violations are made a class A misdemeanor (subsection (c)). Employees and employers would be covered by the new provision (subsection (d)).

From a layperson's reading, it is unclear whether the State, as an employer, would be covered by this bill. "Employer" is defined in paragraph (d)(2) as "a person who employs one or more other persons" (emphasis added). As defined in AS 01.10.060(7), "person" does not include the "state" (as state is defined in AS 01.10.060(13)). When the state is included under other provisions of Title 23, it is specifically included. AS 23.10.037(c).

This position paper assumes the state will be covered by the provisions of HB 540. The question of "secret" personnel files has been of serious concern to the state and its employees. Over the years, the state and its employees have mutually agreed on the treatment of files. Collective bargaining contracts provide elaborate processes and procedures relating to personnel files. The state is undoubtedly in compliance with proposed subsection (a).

Subsection (b) presents considerable administrative problems for the state. While the official personnel file on employees in the classified and partially exempt service are maintained by the Division of Personnel, there is "information" about employees in virtually every office in the state. There is no desire, in fact opposition, by employees and management to keep that information in offices and not in the personnel file. To illustrate, suppose a supervisor verbally reprimands an employee for horseplay in a maintenance shop. In addition, the supervisor tells the employee and makes a note of the incident. The note is information to be used in preparing the next performance evaluation or to justify further constructive and progressive discipline should the offense be repeated. If there is no repeat of the offense, the performance evaluation may not even mention it, and the information is ultimately discarded.

In this example, the note is available for inspection and copying under subsection (a), but it is not placed in the employee's personnel file under subsection (b). It is the state's best interest and employee's best interest to maintain this kind of process.

Subsection (c) would make the state guilty of a class A misdemeanor for its current practices. Compliance with subsection (b) would have three results depending on individual responses from supervisors: some would create truly secret files in defiance of the proposed law; some would cease recording information or cease taking actions that should be recorded; and trivial

POSITION PAPER (continued)

information will be recorded and forwarded by the thousands to the Division of Personnel for placement in the employee's personnel file. Obviously, each of these results is undesirable.

If the state is to be covered by the provisions of HB 540, the Department of Administration must take a position in opposition to it. Administrative difficulties, the undesired results, and the disruption of mutually agreed processes with our employees are the reasons for our opposition.

for Michael P. Fuhrman

Bruce Cummings, Director
Division of Labor Relations

3/17/88

Date

J. M. Andrews

Commissioner John M. Andrews
Department of Administration

3/18/88

Date